

*St Andrew's*, against *Beton of Blebo*, about changing his ward-holding to tax; where the Lords allowed the Bishop to quarrel it, though he had taken the tax-duty.

REPLIED,—There was a disparity; for Archbishop Sharp, who taxed it, was only an administrator, and so could not prejudge the benefice. *2do*, He was a singular successor, and so could not know what his predecessor had done.

The Lords, on Carse's report, in regard of the seeming contrariety of the practics, ordained them to be heard in presence.

The President thought, that, if Lochiel had insisted in his reduction of the Duke's quinquennial retour as to superiorities, he would prevail; for the inquest could never retour him to be in the natural possession of lands, when he got only the feu-duty, which is but *possessio civilis*. See, of this retour, *Stair, 23d et ult. July 1666, Earl of Southesk*. But, to show the Duke what he was to expect, the Lords decided this point that same day in a parallel case, to make it a preparative.

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1688. *January 14.*

PENMAN *against* YOUNG.

THE probation led between Penman the gold-smith, and Young his prentice, is advised. The Lords found the boy had childishly run away from his master, and therefore divided the remanent 300 merks of the prentice-fee yet resting; 200 of it to the master, and the other 100 to remain with the prentice.

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1685 and 1688. The EARL of TWEEDDALE and LADY YESTER *against* The EARL of LAUDERDALE.

1685. *March 4.*—THE Earl of Tweeddale's action against the Earl of Lauderdale was heard *in præsentia*; wherein he convened him on the passive titles, and as lawfully charged to enter heir, to pay him £10,000 sterling, contained in a bond of provision granted by the Duke of Lauderdale to his daughter, now Lady Yester, and got up from the heirs of James Chalmers, advocate, (to whom it is supposed to have been sent, only to make up a claim in the English time, when his estate was under sequestration, and himself in the Tower;) though he gave her afterwards £12,000 sterling, in his contract-matrimonial with Yester, whereof £5000 sterling is paid. But they had omitted to insert a clause, declaring their acceptation of it in satisfaction of all former provisions; for which they give this reason, that, his estate being disponed to her conditionally, and under redemption, it could not be inserted.

Lauderdale, as charged, offered a renunciation: but seeing he could not propone any defence as apparent heir, and that he was not resolved to suffer this debt to be constituted against the estate; therefore he, as a creditor, (and sundry others of his brother's creditors did concur with him,) offered to debate against it. Tweeddale ALLEGED and contended, that, *in hoc judicio*, where he